

From: Greika, Christian J
To: Microsoft ATR
Date: 1/24/02 11:04am
Subject: Microsoft Settlement

I am writing to offer complaint against Section III.D of the proposed final judgment. Section III.D reads as follows:

D. Starting at the earlier of the release of Service Pack 1 for Windows XP or 12 months after the submission of this Final Judgment to the Court, Microsoft shall disclose to ISVs, IHVs, IAPs, ICPs, and OEMs, for the sole purpose of interoperating with a Windows Operating System Product, via the Microsoft Developer Network ("MSDN") or similar mechanisms, the APIs and related Documentation that are used by Microsoft Middleware to interoperate with a Windows Operating System Product. In the case of a new major version of Microsoft Middleware, the disclosures required by this Section III.D shall occur no later than the last major beta test release of that Microsoft Middleware. In the case of a new version of a Windows Operating System Product, the obligations imposed by this Section III.D shall occur in a Timely Manner.

The requirements laid forth in this section are insufficient to promote equality in competing offerings' time to adapt their products in time to compete with new releases of Microsoft Middleware or to support a new version of Windows. Section III.H.3 also states the competing middleware can be locked out of competition by failing to meet "unspecified" technical requirements seven months prior to the the final beta test of a new version of Windows. Why are the requirements unspecified? This opens up opportunities to set demands too taxing for competitors to meet in the shortened time frame made available to them by the fact that they are introduced to the APIs related to new versions of Windows only after said new version has been released to 150,000 beta testers. Microsoft has, under this ruling, the full capability to "plan" development such that they can maximize the probability that competitors will be unable to meet said "unspecified" technical requirements prior to the final beta test. There is no requirement for Microsoft to announce planned beta release dates, so in effect the seven months requirement is unnecessary. You might as well make it one day. A more stringent and fair requirement would be to require Microsoft to publish proposed beta release dates and adjust the time requirement to meet the "unspecified" technical requirements to the date of the beta release. This would provide a more equitable environment, one in which Microsoft still maintains its competitive advantage, but one that gives competitors an opportunity to compete. The current proposal offers Microsoft the chance to erase competition without ever having to compete.